misuse for the benefit of organizations under common control with the bank. It was designed to prevent a bank from risking too large an amount in affiliated enterprises and to assure that extensions of credit to affiliates will be repaid—out of marketable collateral, if necessary.

(c) Since 1968 the Board has permitted member banks to establish and own operations subsidiaries—that is, organizations designed to serve, in effect, as separately incorporated departments of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly (12 CFR 250.141). Since an operations subsidiary is in effect a part of, and subject to the same restrictions as, its parent bank, there appears to be no reason to limit transactions between the bank and such subsidiary any more than transactions between departments of a bank.

(d) Accordingly, the Board has concluded that a credit transaction by a member State bank with its operations subsidiary (the authority for which is based on the 1968 ruling) is not a ''loan or * * * extension of credit'' of the kind intended to be restricted and regulated by section 23A and is, therefore, outside the purview of that section.

[35 FR 10201, June 23, 1970]

§250.241 Exclusion from section 23A of the Federal Reserve Act for certain transactions subject to review under the Bank Merger Act.

(a) *Grant of Exemption.* Section 23A of the Federal Reserve Act shall not apply to a transaction between affiliated insured depository institutions if the transaction has been approved by the appropriate federal banking agency pursuant to the Bank Merger Act.

(b) *Definitions.* For purposes of this section, the terms ''appropriate federal banking agency'' and ''insured depository institution'' are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act.

[57 FR 41644, Sept. 11, 1992]

§250.242 Section 23A of the Federal Reserve Act—definition of capital stock and surplus.

(a) An insured depository institution's capital stock and surplus for purposes of section 23A of the Federal Reserve Act (12 U.S.C. 371c) is:

(1) Tier 1 and Tier 2 capital included in an institution's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the institution's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of an institution's allowance for loan and lease losses not included in its Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the institution's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3).

(b) For purposes of this section, the terms *appropriate Federal banking agency* and *insured depository institution* are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[61 FR 19806, May 3, 1996]

§250.250 Applicability of section 23A of the Federal Reserve Act to a member State bank's purchase of, or participation in, a loan originated by a mortgage banking affiliate.

(a) A question has been raised as to whether a member bank's purchase, without recourse, and at face value, of any mortgage note, or participation therein, from a mortgage banking subsidiary of its parent bank holding company at the inception of the underlying mortgage loan involves a ''loan'' or ''extension of credit'' from the member bank to the affiliate within the meaning of section 23A of the Federal Reserve Act (12 U.S.C. 371c). In the given circumstances, the affiliate originated the mortgage loans at premises other than an office of the member bank and hence was not a company furnishing services to or performing services for the holding company or its banking